

CRIMINAL MISCELLANEOUS APPLICATION NO. 48 OF 2004.

Shri Nanda R. Haldankar,
r/o H. No. 239, Khotla,
Saligao.

... Applicant.

Versus

1. State Shri Balkrishna
Kauthankar, H.C. No. 1270,
Calangute Police Station,
Calangute.
2. Smt. Maria Sequeira,
r/o H. No. 2/96B, Khotla,
Saligao.

... Respondents.

Mr. S.D. Lotlikar, Senior Advocate with Miss S. Dessai,
Advocate for the Applicant.

Mr. S.N. Sardesai, Public Prosecutor for the Respondent
No. 1.

Mr. M.P. Mulgaonkar, Advocate for the Respondent No. 2.

Coram : P.V. HARDAS, J.

Date : 6th April 2004.

ORAL JUDGMENT.

This is an application under Section 482 of the Code of Criminal Procedure filed by the applicant challenging the Order passed by the Ist Additional Sessions Judge, Panaji, dated 14th October 2003, in Criminal Revision Application No. 60 of 2002, dismissing the revision filed by the applicant and maintaining the Order passed by the Executive Magistrate, Mapusa, dated 23rd September 2002.

2. By the aforesaid Order of the Executive Magistrate, the applicant herein, who was the respondent

before the Executive Magistrate, was called upon to remove his suit structure/cow shed or in the alternative to dig a soak pit at least 20 metres away from the drinking water wells, which are within the proximity of the suit structure/cow shed and the applicant was further directed not to allow any waste water mixed with urine and cowdung flow on the traditional access.

3. The learned counsel appearing for the applicant has produced on record a Notification, dated 24th January 2002, issued by the Government, empowering the Mamlatdars/Joint Mamlatdars to exercise powers under Sub-Section (1) of Section 133 of the Code of Criminal Procedure. The learned counsel has also relied on an unreported Judgment of this Court, dated 8th March 2002, in Criminal Revision Application No. 2 of 2002, (Smt. Filomena Pereira v. State and another). The Single Judge of this Court, by placing reliance on the aforesaid Notification, had come to the conclusion that prior to the issuance of this Notification, the Mamlatdars were not empowered to act as the Special Executive Magistrate on whom the necessary powers had been conferred and, therefore, did not have the jurisdiction to decide the matter. In view of this, the learned Single Judge remanded the matter to the authority for decision afresh.

4. Mr. Mulgaonkar, learned counsel appearing on behalf of respondent no. 2, has also submitted that in view of the issuance of the Notification conferring the powers of the Executive Magistrate on the Mamlatdar, the matter be remitted to the Executive Magistrate (Joint Mamlatdar) for decision afresh. He further urges that in view of the public nuisance, the Executive Magistrate be directed to decide the application of the respondent no. 2 as expeditiously as possible. On behalf of the State I have also heard Mr. Sardesai, learned Public Prosecutor.

5. In view of the Notification, dated 24th January 2002, the Executive Magistrate/Joint Mamlatdar can only be said to have been conferred with the jurisdiction since the date of the Notification. Admittedly, in this case, on 28th July 1997, an application under Section 133 of the Code of Criminal Procedure was filed by the respondent no. 2. On 4th February 1998, the Executive Magistrate passed a conditional Order. Thereafter, by the Order, dated 23rd September 2002, impugned in the present application, the Executive Magistrate made the conditional Order absolute. Thus, when the conditional Order came to be passed by the Executive Magistrate, he did not have the necessary jurisdiction under Sub-Section (1) of Section 133 of the Code of Criminal Procedure. In view of this,

there is substance in the contention of the learned counsel for the applicant and, accordingly, Criminal Miscellaneous Application is allowed. The Orders of the two Courts below impugned in the present application are quashed and set aside and the matter is remitted to the Executive Magistrate for decision afresh. The Executive Magistrate shall endeavour to decide the application filed by the respondent no. 2 as expeditiously as possible. No orders as to costs.

(P.V. HARDAS)
JUDGE.

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